Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No.962 of 2012

(Arising out of OIO-61-62/COMMR/SURAT-II/2012 dated 28/09/2012 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-II)

C.C.E. & S.T.-Surat-ii ....**Appellant**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

VERSUS

Meghmani Organics Ltd ....**Respondent**
Agro Division-ii,
Plot No. 5001/b, 5030, 31, 32, Gidc,
ANKLESHWAR, GUJARAT

APPEARANCE:
Shri Dinesh Prithiani, Assistant Commissioner (AR) for the Appellant
Shri Amal Dave, Advocate for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11288 /2022

DATE OF HEARING: 19.10.2022
DATE OF DECISION:19.10.2022

RAMESH NAIR

The issue involved in the present case is that whether the respondent is entitled for cenvat credit on the duty paid on capital goods at the time of debonding of EOU in terms of proviso to Rule 3 of Cenvat Credit Rules, which was inserted vide Notification No.35/2008-C.E. (N.T.) dated 24.09.2008 even for the period prior to the insertion of the said proviso.

02. Shri Dinesh Prithiani, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the grounds of appeal. He submits that the specific provision in this regard was made with effect from 24.09.2008 whereas, the period in the present case is December-2007 to January-2008 therefore, benefit of this provision is not available to the respondent.

03. Shri Amal Dave, learned counsel appearing on behalf of the respondent submits that this issue has been decided in the following judgments therefore, the revenue's appeal is not maintainable.

- STANADYNE AMALGAMATIONS PVT. LTD.- 2019 (29) GSTL 605 (Mad.)
- CCE, PUNE V/s. RAJDHANI FAB. PVT. LTD.- 2008 (221) ELT 435 (Tri.-Mumbai)
- CCE V/s. RAJDHANI FAB. PVT. LTD.- 2009 (237) ELT A47 (Bom.)

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the revenue's grounds of appeal is that the cenvat credit in respect of capital goods on which the duty was paid during debonding has come into effect by Notification No.35/2008-C.E. (N.T.) dated 24.09.2008 therefore, for the period prior to that date cenvat cannot be allowed. On going through the judgments cited by the learned counsel for the respondent, we find that the identical issue has been considered and even after dealing with the proviso inserted in Rule 3 of Cenvat Credit Rules vide Notification No.35/2008-C.E. (N.T.) dated 24.09.2008. The courts held that even for the prior period also the cenvat credit is admissible in terms of overall provisions of Cenvat credit Rules.

05. We find that the revenue could not bring on record anything contrary to the views taken by the High Courts of Madras, Bombay therefore, following the judgments in the case of STANADYNE AMALGAMATIONS PVT. LTD. and RAJDHANI FAB. PVT. LTD.(supra), the respondent are entitled for cenvat credit therefore, the original authority has rightly extended the cenvat credit. Accordingly, the impugned order is upheld. Revenue's appeal is dismissed.

(Operative portion pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul